

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2682 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AEC LTD

Versus

ELECTRICITY MAJDOOR SABHA

Appearance:

Mr.K.S.NANAVATI, Sr.Advocate with
Mr.K.D.Gandhi for the Petitioner
MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 26/11/98

ORAL JUDGEMENT

This petition is filed by the Ahmedabad Electricity Co. Ltd. ("Company" for short) for an appropriate writ direction or order quashing and setting aside an order dated Jaunary 13, 1998 below applications Exh.30, 31 and 33 passed by the Industrial Court, Ahmedabad. English translation is supplied by the

petitioner. The operative part of the order reads as under:-

- "1. The application, Ex.30, for the interim reliefs prayed for therein by the First Party Union is partly allowed and the applications Ex.31 and Ex.33 of the Second Party Company are hereby rejected.
2. The pay scales revision and incidental benefits declared by the exparte proposal of the Second Party company vide notice dated 1.7.95 Ex.90 shall be treated as the interim relief demand of the reference and accordingly it is ordered that the company shall pay the same on the basis of this order with retrospective effect from 1.10.1992 to all this permanent, temporary, casual etc. workmen belonging to all categories and working in the company without any condition or obtaining any individual consent from them and shall continue to pay regularly every month till the final decision is taken in this reference on the main demand on its merits.
3. Taking into consideration the special circumstances of this case, the workmen to whom the amount of revision of pay scale and other benefits are already paid or are continued to be paid pursuant to the notice dated 12.7.95 by the company, they are not required to be again paid any further arrears under this order. However, the workmen who have still not been paid the benefits pursuant to the said notice, or who are paid some amounts earlier but which have been recovered, all such remaining workmen shall be paid like other workmen with effect from 1.10.92 benefits pursuant to the said notice and it is ordered that the amount of arrears of benefits payable to such workmen shall be paid by the company with 12% interest with effect from 1.7.1995.
4. The amount paid or payable under this order without interest by the Second Party Company shall be entitled to have set off from the amount that may be payable at the time of deciding finally the main demands in this reference on their merits.
5. This award shall be implemented within one month from the date of its publication.

6. As regards costs of applications Exs.30,31 and 33, it is ordered that the Second Party Company shall pay Rs.3000/- (Rupees Three Thousand only) to the First Party Union within one month from the date of publication of this award.

7. With regard to the hearing of the main demands of the reference the next date shall be fixed on 13.2.1998."

2. The case of the petitioner company was that the Court has passed an interim order/award making certain observations by which some points have been finally concluded. It is contended by Mr.K.S.Nanavati, Learned Counsel for the petitioner that though full and final settlement has been arrived at between the company and 98% to 99% of the employees individually and though they have agreed to settle the matter and the reference is required to be finally culminated into an award, the respondent Union objected to it and the Industrial Court without appreciating the relevant provisions of the Bombay Industrial Relations Act, 1946 and Industrial Disputes Act, 1947 in their proper prospective, granted certain benefits by passing interim award which has caused serious prejudice to the company and the impugned order dated 13.1.1998 requires interference by this Court. It was also contended that the Court has committed an error of law in observing that in a pending matter, individual employees have no right to arrive at any settlement. According to Mr.Nanavati, the test is not whether a representative Union has or has not agreed to settle the matter but whether majority of the employees wanted to get the matter settled. If a settlement has been arrived at even individually with almost all employees, it was obligatory on the part of the Court/Tribunal to take into account that vital fact and to make full and final award in terms of such settlement.

3. Mr.Clerk, on the other hand, appearing for Majdoor Sabha contended that the question has arisen under the Bombay Industrial Relations Act, 1946 and the provisions of the said Act are relevant while deciding the validity or otherwise of so-called settlement arrived at between the parties. According to him, since the respondent is a Representative Union, it is that Union alone which has right to enter into any settlement. Any other agreement or settlement said to have been arrived at individually with the employees or with any other

Union cannot be said to be legal, valid and binding. In other words according to him such settlement cannot be said to be a settlement in the eye of law.

4. In our opinion, it is not necessary for us to express final opinion one way or the other since Reference is pending before the Industrial Court. In the instant case, an order is passed by the Industrial Court below applications Ex.30,31 and 33. Application Ex.30 is filed by the respondent union for interim relief. English translation is made part of the record. In para 11, following prayers have been made:-

11. It is therefore prayed that:-

"A. An order may please be passed directing the Second Party Company to pay to all its permanent, temporary, casual etc workmen of all categories to pay 25% of the basic salary as on 1.10.92 and a minimum increase of Rs.250/- in the basic salary and all the incidental benefits payable on the basis of the increase in the basic salary accordingly with effect from 1.10.1992.

B. An order may please be made directing the Second Party Company to make the pay alongwith the arrears of the amount stated in the aforesaid para A with effect from 1.10.92 with 18% interest thereon.

C. Such other orders may be passed as may be deemed just and proper by this Hon'ble Court.

D. Second Party Company may be ordered to pay Rs.2000/- being the costs of this application to the First Party Union."

Thus, by this application, certain interim directions were sought by the Union.

5. Ex.31 is an application filed by the Company raising certain preliminary objections. In Para 8, the following prayers have been made:-

8. In view of the facts aforesaid, the company begs to take preliminary contentions regarding the maintainability of the application as under:-

"a) Majority of the employees do not want the representative union to negotiate, settle or

proceed with this reference.

b) 97% of the employees are already getting the interim relief ranging from Rs.100/- to Rs.380/- per month effective from 1.10.1992, and they have also given the consent letters agreeing to adjust the Interim Relief against any amount that may be given by this Honourable Court through an award.

c) Though Sangarsh Samiti is not a Representative Union but since it is representing large number of employees they may also be made a party in this proceedings before the matter may be proceeded with."

Thus, by the application Ex.31, the Company complained that the majority of the employees did not want the representative Union to negotiate, settle or proceed with the reference. A prayer was made, therefore, to join Sangarsh Samiti to be a party to the proceedings.

Ex.33 is also an application filed by the Company in which following prayer was made in Para 7:-

7. In view of the above, the company betgs to pray as under:

a) Pending the finalisation of the Award to be made by the Hon. Court in this reference, the Hon. Court may be pleased to dismiss the application for grant of interim relief dated 26.6.1995.

b) Any other reliefs that the Hon. Court deems fit be granted.

From the prayer clause, it is crystal clear that the company wanted the Court to dismiss application for interim relief (Ex.30) filed by the Union. In Para 6 of the application, no doubt, it was stated that "pratically" all the employees have settled the matter and hence it was not necessary to proceed further with the reference and the settlement should be made full and final award. The Court, however, disposed of all the three applications by granting interim relief in favour of employees and by dismissing applications Exh.31 and 33 filed by the Company.

6. Several contentions were taken by Mr.K.S.Nanavaty

on behalf of the petitioner Company as well as by Mr.A.K.Clerk, appearing for the respondent union. We express no opinion on merits of the matter. We also do not propose to enter into larger questions raised before us in view of the fact that the main matter is pending before the Court and is yet to be decided.

7. It is an admitted position that almost 98% to 99% (98.61%) employees have been granted relief by the Company itself. It was the case of the company before the Industrial Court as well as before us that since about 99% employees have agreed to a settlement though individually, it should have been made full and final award by the Court. It was also submitted that the law does not prevent individual employees to settle the dispute with the Management and there is no embargo on the part of the Court to pass an award in terms of such settlement. On the other hand, it was contended on behalf of the respondent Union that no such award can be passed as a settlement arrived at with individual workers cannot be said to be settlement in the eye of law.

8. In our opinion, as the reference is pending, expression of opinion one way or the other may prejudice either party. The question, therefore, is whether in the facts and circumstances of the case, an order passed by the Industrial Court granting interim relief in favour of even those employees who had not individually settled the matter can be said to be illegal, unlawful or otherwise unjust. It is the case of the Management itself that about 99% employees have been granted the benefits and that it ought to have been made full and final award. In that case, all the employees would have got benefits. The Court has also considered financial position of the company. Very few employees would be deprived of benefits if the interim order passed by the Court is stayed or interfered at this stage. In the facts and circumstances, in our opinion, it cannot be said that by extending the benefits in favour of only few employees who had not individually agreed to the settlement said to have been arrived at by about 99% employees, the Industrial Court has committed an error of law or of jurisdiction.

9. So far as rejection of applications Ex.31 and 33 is concerned, looking to the order as a whole, it is clear that the Court will deal with all the contentions raised by both the parties at the time of final hearing. Our attention was, no doubt, invited by Mr.Nanavati that while passing interim order, the Court has made certain observations which may prejudice the case of the company

at a later stage. Our attention was, however, invited by Mr.Clerk to Para 19 of the order wherein the Court has observed that all the questions will be decided at the time of final hearing of the reference.

10. On our part, we make it abundantly clear that all the observations made by the Industrial Court while passing the order below applications Ex.30,31 and 33 are ordered to be treated as prima facie observations interlocutory in nature and as and when the reference will be heard by the Industrial Court, it will be decided on its own merits after hearing the parties. It is open to all the parties to raise all contentions available to them in law and the Court will decide the same strictly on their own merits without being influenced by the observations made in the interim order or the observations made by us in this order.

11. With the above observations, the petition is disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

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